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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Order pronounced on 03.11.2022*

+ CRL.REV.P. 181/2021

SH. VINOD DAS

..... Petitioner

Through: Mr. Arvind Kumar Mishra, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. N.S. Bajwa, APP with W/SI
Meena, PS Dabri.

CORAM:

HON'BLE MR. JUSTICE TALWANT SINGH

Talwant Singh, J.:

1. The present revision petition has been filed for setting aside the order dated 17.05.2019 passed by the learned Trial Court by which the application for recalling the child victim PW-1 and IO, PW-13 was considered and the application was partly allowed regarding recalling of the IO (PW-13) and the application as far as the child victim, PW-1 was dismissed.

2. In brief facts, it is mentioned that the child victim is the step-daughter of the accused revisionist and at her instance, FIR No.680/2017 under Section 506 IPC and Section 10/6 of the POCSO Act was lodged at PS Dabri. The present revisionist was arrested and sent to judicial custody.

2.1 Charge sheet was filed, charges were framed and after examination of all the public witnesses including the child victim and her mother, the petitioner/revisionist was released on bail by the Court in the month of

August, 2018.

2.2 It has been submitted that the child victim and her mother have given several contradictory statements before the learned Trial Court. The revisionist is residing separately from the child victim and her mother. On 14.12.2019, the petitioner received through speed post, a letter sent by the child victim, wherein she had narrated the true facts. The petitioner handed it over to the counsel, who moved an application under Section 311 Cr.P.C. for recalling the child witness and the IO.

2.3 After hearing the arguments, the application was partly allowed and the IO was ordered to be again cross-examined, however, the relief regarding recalling the child witness was declined, hence, the present revision petition has been filed.

3. The grounds of revision are that the impugned order was passed on conjecture and surmises. The letter was received in an envelope, which bears a date as 09.04.2019 but the learned Trial Court ignored the same. The child witness needs to be recalled to know the truth of the said letter; the child witness is residing separately with her mother at the parental house of her mother and there is no communication between the revisionist on one side and the child and her mother on the other side. On these grounds, it has been prayed that the impugned order may be set aside and the child victim may be recalled for cross-examination.

4. Notice was issued. Status Report has been filed in which it has been mentioned that the prosecutrix was aged about 12 years, who was residing with her parents. Her father sexually assaulted the child but she had not disclosed anything to her mother, so when he repeated the same act again on 29.10.2017, she revealed everything to her mother and on the basis of the

complaint, the FIR was registered.

4.1 Statement of the prosecutrix was recorded under Section 164 Cr.P.C. before the learned Metropolitan Magistrate. The accused was arrested and sent to judicial custody. Charge sheet was filed, and thereafter, charges were framed.

4.2 After recording the statement of the public witnesses, including the mother and the child victim, the accused was released on bail in August, 2018. The application was rejected regarding recalling of PW-1 by the Court.

5. I have heard the learned counsel for the parties.

6. The learned Trial Judge has observed as under:

“Ld. Counsel for accused submits that he has moved an application u/s 311 Cr.P.C. for recalling the child victim (PW-1) and IO (PW-13). Ld. Counsel further submits that on 14.03.2019, IO was examined but he was not present, therefore, his cross-examination could not be done. Ld. Counsel further submits that child victim had written a letter and sent to the accused by post stating that the allegations which she levelled against him were false and she gave false statement at the instance of her mother. Ld. Counsel further submits that both these witnesses may kindly be recalled.

Ld. Addl. PP for the State has opposed the application.

Heard. Record perused.

The letter which the accused is claiming to have received from the child victim by post is not bearing any date. It is clear that the child letter was written after the cross-examination of the child victim in the court. The child victim is the daughter of the accused, therefore, there is every possibility that under the influence of the accused or other family members, she had written the letter. If the letter in question is considered at this stage, it would cause great prejudice to the prosecution and it appears that it is an attempt of the accused to get the child victim hostile so that her statement/testimony could not be read in evidence.

Thus, I do not find any merit in the submission of Ld. Counsel for the accused to re-call the child victim to confront her letter in question. So far as, the question of cross-examination of IO is concerned, though on two

occasions, IO (PW-13) was not cross-examined, however, in the interest of justice, one last and final opportunity is granted to the accused to cross-examine IO (PW-13).

Issue summons to IO (PW-13), ASI Neeraj, for 03.07.2019.”

7. Copy of the said letter alleged to have been written by the child victim is also on record. There is no date mentioned on the said letter. Copy of the envelope shows that the same was dispatched on 09.04.2019. In the present case, the last witness, i.e., the IO was also examined on 14.03.2019. It means that the child victim was examined much prior to that. As mentioned in the petition itself, the petitioner was released on bail in August, 2018. It appears that the petitioner has wrongly mentioned the date of receipt of letter as 14.12.2019 in para 4 of the petition whereas the order in question was passed on 17.05.2019 itself.

7.1 In the application moved before the learned Trial Court by the petition in para 3, the petitioner has mentioned the date as 12.04.2019 as the date on which the said letter was received.

8. In the present case, where the child witness was examined a long time ago and after examining of all the public witnesses, the petitioner was released on bail in August, 2018 and few months thereafter, the letter in question surfaced, which is negating the entire story of the prosecution, in my view, the learned Trial Court has rightly observed that there is every possibility that the said letter has been written by the prosecutrix/victim under influence of the present petitioner as the victim is his own daughter or there may be influenced from other family members and it has been also rightly observed that it is an attempt to get the child victim declared hostile.

9. The learned Trial Court has rightly allowed the cross-examination of

the IO as the IO was not cross-examined on two occasions.

10. In view of the above, the petition is liable to be dismissed and the same is accordingly dismissed.

TALWANT SINGH, J

NOVEMBER 03, 2022/pa

Click here to check corrigendum, if any

